IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

FAO.No. 302 of 2006()

AGAINST THE ORDER DATED 02/08/2006 IN IA 31/06 IN OS.134/2004 of SUB COURT, TIRUR

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APPELLANT/PETITIONER/PLAINTIFF

MUNDAMPRA KUNHAHAMEDKUTTY,
S/O. MOHAMMED KUNHI, SUNEERA MANZIL,
AREACODE AMSOM DESOM, ERNAD TALUK.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SMT.A.R.DIVYA

RESPONDENT/RESPONDENT/DEFENDANT

K.K.MOHAMMEDALI, S/O. HAMZA,
THARA THEATRE, KOTTAKKAL,
KOTTAKKAL AMSOM DESOM, TIRUR TALUK.

BY ADV. SRI.T.KRISHNAN UNNI
SRI.SAJU.S.A

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

F.A.O.NO. 302 OF 2006

Dated 12th March 2007

J U D G M E N T

Plaintiff in O.S.134/2004 on the file of Sub court, Tirur is the appellant. Defendant therein is the respondent. Appellant instituted the suit for specific performance of an agreement for sale in respect of a cinema theatre. Along with the suit appellant filed I.A.2052/04 under Order XXXIX Rule 1 of Code of Civil Procedure. An ex-parte order of injunction was granted on 21/10/2004 restraining respondent from alienating or removing the machineries from the property. Alleging that subsequent to the order, violating the order of injunction respondent transferred the theatre to one Hassan, appellant filed I.A.31/2006 an application under Rule 2A of order XXXIX of the Code of Civil Procedure. According to appellant in violation of the order of injunction respondent transferred license in favour of K.Hassan and therefore he is to be prosecuted for violation of the order of injunction.

Respondent filed an objection contending that there was no alienation or transfer of possession or violation of order of injunction and theatre belongs to a partnership firm under Ext.B1 and apart from respondent K.Hassan, K.Abdu and K.Kunharamu are partners and when respondent has to leave India he has requested the panchayat to transfer the license in the name of Hassan and it was done much before the institution of suit and the order of injunction and panchayat has transferred license in the name of Hassan and it does not amount violation of the order of injunction and therefore petition is to be dismissed. Learned Sub Judge on the evidence of PW1 and RW1 and Exts.A1 to A6 and Exts.B1 to B4 dismissed the application holding that appellant failed to establish any violation of the order of injunction. It is challenged in this appeal.

2. Learned counsel appearing for appellant and respondent were heard.

3. Ext.B1 copy of partnership deed executed on 1/2/1990 made available establish that partners of the firm are respondent, K.Hassan, K.Abdu and K.Kunharamu. The violation of order of injunction alleged was transfer of license in favour of K.Hassan. As rightly argued by learned counsel appearing for respondent,

change of license from the name of respondent to name of K.Hassan, another partner of the firm will not amount to transfer of ownership or possession of the theatre in violation of the order of injunction granted by Sub court, Tirur. In such circumstances, I find no reason to interfere with the order passed by learned Sub Judge.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.